

REMARKS

Claims 1-20 are pending in the present application.

At the outset, Applicants wish to thank Examiner Zucker for indicating that Claims 1, 2 and 7-9 are allowed. Applicants submit that, in view of the following remarks, all of the pending claims are allowable.

The rejection of Claims 3-5 under 35 U.S.C. §102(b) over DeMassa is respectfully traversed.

Claim 3 relates to a melt comprising at least one phenolic compound, and phenothiazine. Applicants submit that the melt of the present invention is distinct from the composition disclosed by DeMassa.

As recognized by the Examiner, DeMassa disclose a liquid composition is formed by mixing a liquid phenol compound with phenothiazine. However, Applicants submit that the present invention does not provide such a liquid composition. Specifically, Applicants note that the disclosure relied upon by the Examiner in DeMassa relates to phenolic compounds that exist in a liquid state at room temperature and, as such, the composition disclosed by DeMassa is itself a liquid composition.

In contrast, the present invention provides a melt. In other words, the phenolic compounds used in the present invention are solid a room temperature. Accordingly, the phenolic compounds must first be heated to a temperature exceeding their melting temperature and only at this time can the solid phenolic compound be used as a solvent for phenothiazine thus forming a melt (see page 15, line 41 to page 16, line 36).

In view of the foregoing, Applicants submit that the claimed composition is distinct from the compositions disclosed in DeMassa. Withdrawal of this ground of rejection is requested.

The rejection of Claims 3 and 11 under 35 U.S.C. § 112, second paragraph, is obviated in part by amendment and traversed in part.

In regard to Claim 11, Applicants submit that this claim has been amended to ensure proper antecedent basis. Therefore, the rejection of this claim is now believed to be moot.

Turning to Claim 3, Applicants have amended this claim to remove the optional component and have represented the subject matter of this claim as a new dependent claim (see Claims 12-14 and 18-20). With respect to the newly presented claims, Applicants submit that the stabilizer has been defined as one that “delays or inhibits polymerization of acrylic acid” (see page 10, lines 7-8). Applicants submit that newly presented Claims 12-14 and 18-20 are definite within the context of 35 U.S.C. §112, second paragraph.

To this end, the Examiner is reminded that definiteness of claim language must be analyzed, not in a vacuum, but in light of:

- (A) The content of the particular application disclosure;
- (B) The teachings of the prior art; and
- (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made (MPEP §2173.02).

Applicants wish to draw the Examiner’s attention to the discussion of the stabilizers of the present invention set forth in the of the objected to terms in the specification at page 10, line 3 to page 14, line 47 and page 15, lines 22-39. In view of this description, Applicants

submit that the meaning and full scope of the term “stabilizer” would be understood by the skilled artisan. As such, Applicants submit that this ground of rejection should be withdrawn.

Applicants request that the Examiner acknowledge withdrawal of this ground of rejection.

The objection to Claim 10 is respectfully traversed.

In the outstanding Office Action the Examiner objects to Claim 10 alleging that this claim improperly depends from Claim 3 and does not further limit the same because “Claim 3 is a composition claim that cannot be properly limited by a process claim.” Applicants submit that this objection by the Examiner is improper.

The Examiner is reminded that “The test as to whether a claim is a proper dependent claim is that it shall include every limitation of the claim from which it depends (35 U.S.C. 112, fourth paragraph) or in other words that it shall not conceivably be infringed by anything which would not also infringe the basic claim.” (MPEP §608.01(n)) Further,

The fact that the independent and dependent claims are in different statutory classes does not, in itself, render the latter improper. Thus, if claim 1 recites a specific product, a claim for the method of making the product of claim 1 in a particular manner would be a proper dependent claim since it could not be infringed without infringing claim 1. Similarly, if claim 1 recites a method of making a product, a claim for a product made by the method of claim 1 could be a proper dependent claim. MPEP §608.01(n)

In the present case, Claim 10 relates to a Claim 3 in that Claim 10 is a method of use of the product of Claim 3. Therefore, the method of Claim 10 can not be infringed without also infringing the basic claim – Claim 3. Accordingly, the relationship between Claims 3 and 10 is proper and is consistent with the guidelines in MPEP §608.01(n).

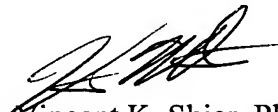
In view of the foregoing, Applicants request withdrawal of this ground of objection.

The objection to the specification is believed to be obviated by submission of the Brief Description of the Drawings herewith. Applicants request that the Examiner acknowledge withdrawal of this ground of objection.

Applicants submit that the present application is now in condition for allowance. Early notification of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.  
Norman F. Oblon



Vincent K. Shier, Ph.D.  
Registration No. 50,552

Customer Number

**22850**

Tel: (703) 413-3000  
Fax: (703) 413-2220  
(OSMMN 08/03)